

## **IC 16-44-2**

### **Chapter 2. Inspection, Sale, and Delivery of Petroleum Products**

#### **IC 16-44-2-1**

##### **"Gasoline" defined**

Sec. 1. As used in this chapter, "gasoline" has the meaning set forth in IC 6-6-1.1-103.

*As added by P.L.2-1993, SEC.27.*

#### **IC 16-44-2-2**

##### **"Kerosene" defined**

Sec. 2. As used in this chapter, "kerosene" means any light fuel oil:

- (1) with an A.P.I. gravity of at least thirty-nine (39) degrees Fahrenheit as determined by the ASTM D-287-55 method; and
- (2) having an end point of not greater than five hundred ninety (590) degrees Fahrenheit as determined by the ASTM D-86-56 distillation method.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.3.*

#### **IC 16-44-2-2.4**

##### **"MTBE" defined**

Sec. 2.4. As used in this chapter, "MTBE" refers to the gasoline additive methyl tertiary butyl ether.

*As added by P.L.26-2002, SEC.2.*

#### **IC 16-44-2-3**

##### **"Petroleum products" defined**

Sec. 3. (a) As used in this chapter, "petroleum products" includes the following:

- (1) Gasoline.
- (2) Naphtha.
- (3) Kerosene.
- (4) Distillate.
- (5) Fuel oil.
- (6) Similar petroleum products, regardless of name, including benzol and other similar products that are or may be used in the blending of motor fuel.

(b) The term does not include the following:

- (1) Lubricating oils.
- (2) Any product having:
  - (A) a Saybolt universal viscosity at one hundred (100) degrees Fahrenheit of at least seventy (70) seconds; and
  - (B) a flash point of at least one hundred fifty (150) degrees Fahrenheit by the ASTM method.

*As added by P.L.2-1993, SEC.27.*

#### **IC 16-44-2-4**

##### **Gasoline and kerosene for sale or use in Indiana; inspection of samples; fee**

Sec. 4. (a) The state department or any authorized agent of the state department may inspect samples of gasoline or kerosene stored in any tank:

- (1) that is adjacent to a refinery or marine or pipeline terminal in Indiana; and
- (2) from which withdrawals are made for sale or use in Indiana or for transportation to destinations in Indiana other than transportation to other refineries or terminals in Indiana.

(b) Gasoline or kerosene inspected under subsection (a) is subject to the inspection fee specified in section 18 of this chapter whenever the stock in the tank is replenished.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.4.*

#### **IC 16-44-2-5**

##### **Imported gasoline and kerosene; inspection of samples; fee**

Sec. 5. (a) The state department or any authorized agent of the state department may inspect samples of gasoline or kerosene imported into Indiana other than that placed in storage at refineries or marine or pipeline terminals in Indiana.

(b) Gasoline or kerosene inspected under subsection (a) is subject to the inspection fee specified in section 18 of this chapter.

(c) A person who receives gasoline or kerosene:

- (1) that is imported into Indiana (other than that placed in storage at refineries or marine or pipeline terminals in Indiana); and
- (2) on which the inspection fee has not been paid;

shall notify the state department of the receipt of the gasoline or kerosene.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.5.*

#### **IC 16-44-2-6**

##### **Place of inspections**

Sec. 6. The state department may conduct inspections and tests on gasoline or kerosene at any place the gasoline or kerosene is offered for sale in Indiana.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.6.*

#### **IC 16-44-2-7**

##### **Prohibition on sale of defective products**

Sec. 7. (a) If the state department's inspection of gasoline or kerosene under this chapter reveals that the gasoline or kerosene fails to meet the specifications prescribed by law for those products, the state department may prohibit the sale of those products.

(b) A person may not offer for sale any gasoline or kerosene that the state department has prohibited from sale.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.7.*

#### **IC 16-44-2-8**

##### **Conduct of inspections; minimum specifications**

Sec. 8. (a) The inspections and tests made by the state department

under this chapter shall be conducted in accordance with the methods outlined by the American Society for Testing and Materials.

(b) The inspections and tests as to gasoline, gasohol, and kerosene must reflect the following minimum specifications necessary for the approval of the product:

(1) Gasoline or gasohol:

(A) Corrosion Test † Method ASTM D-130. A clean copper strip may not show more than extremely slight discoloration when submerged in the gasoline for three (3) hours at one hundred twenty-two (122) degrees Fahrenheit.

(B) Distillation Range † Method ASTM D-86. When the thermometer reads one hundred sixty-seven (167) degrees Fahrenheit, not less than ten percent (10%) may be evaporated. When the thermometer reads two hundred eighty-four (284) degrees Fahrenheit, not less than fifty percent (50%) may be evaporated. When the thermometer reads three hundred ninety-two (392) degrees Fahrenheit, not less than ninety percent (90%) may be evaporated. The residue may not exceed two percent (2%). Percent evaporated is found by adding the distillation loss to the amount collected in the receiver at each specification temperature.

(C) Sulphur † Method ASTM D-1266 or D-2622. Sulphur may not exceed twenty-five hundredths of one percent (0.25%).

(D) Vapor Pressure † Method ASTM D-4953, ASTM D-5191, or any other ASTM method to determine vapor pressure approved by the United States Environmental Protection Agency. For gasoline, the Reid vapor pressure at one hundred (100) degrees Fahrenheit may not exceed the following:

(i) Fifteen (15) pounds per square inch at the normal barometric pressure at the point of delivery during November, December, January, February, and March.

(ii) Fourteen (14) pounds per square inch during April and October.

(iii) Twelve (12) pounds per square inch during May, June, July, August, and September.

(E) For gasohol (a blend of gasoline and alcohol permitted under federal tax requirements), the vapor pressure may not exceed the following:

(i) Sixteen (16) pounds per square inch during November, December, January, February, and March.

(ii) Fifteen (15) pounds per square inch during April and October.

(iii) Thirteen (13) pounds per square inch during May, June, July, August, and September.

(F) After July 23, 2004, gasoline may not contain more than one-half percent (0.5%) of MTBE by volume.

(2) Kerosene:

(A) Flash Test Method ASTM D-56. Flash point may not be lower than one hundred (100) degrees Fahrenheit.

(B) For the purpose of this chapter, any petroleum product designated by name or reference as "kerosene" must meet the federal specifications for kerosene VV-K-211d in effect on March 1, 1977.

(c) Gasoline, gasohol, and kerosene products that do not comply with the minimum specifications described in subsection (b) may not be sold, offered for sale, or used in Indiana.

(d) Petroleum products other than gasoline, gasohol, or kerosene shall be inspected and tested by the methods as are necessary to determine the contents and characteristics of the product.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.8; P.L.151-1997, SEC.1; P.L.26-2002, SEC.3.*

#### **IC 16-44-2-9**

##### **Petroleum products containing ethanol or methanol; sale or delivery other than retail; instrument requirements**

Sec. 9. (a) A person who sells or delivers a petroleum product containing ethanol (ethyl alcohol) or methanol (methyl alcohol), or both, to a person other than a retail consumer must place on the instrument evidencing the sale or delivery of the petroleum product:

(1) the name of each alcohol; and

(2) the percentage (to the nearest whole percent), by volume, of each alcohol;

that is contained in the petroleum product sold or delivered by the person.

(b) A person who fails to comply with this section commits a Class A infraction.

*As added by P.L.2-1993, SEC.27.*

#### **IC 16-44-2-10 Repealed**

*(Repealed by P.L.123-1994, SEC.3.)*

#### **IC 16-44-2-11**

##### **Samples; inspections and tests**

Sec. 11. (a) The state department or any authorized agent of the state department may take samples of petroleum products for tests, make inspections at any points inside or outside Indiana, open any original container containing petroleum products, and take a true sample of not less than sixteen (16) ounces of the contents, even though the original container may still be in the possession of a common or contract carrier if opening and sampling does not unduly inconvenience or hamper the transportation of the products. The state department or any authorized agent of the state department may not take a sample that exceeds sixty-four (64) fluid ounces.

(b) If an original container is opened and sampled under subsection (a), the container shall be resealed with seals furnished by the state department or any authorized agent of the state department.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993,*

*SEC.10.*

#### **IC 16-44-2-12**

##### **Powers of law enforcement officers**

Sec. 12. The authorized agents or employees of the state department have the authority of law enforcement officers in the enforcement of this chapter, including the authority to arrest, with or without warrants, and to take offenders to courts for prosecution.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.11.*

#### **IC 16-44-2-13**

##### **Rules and regulations governing inspections, forms, and enforcement**

Sec. 13. The state department may adopt rules under IC 4-22-2 concerning the following:

- (1) Methods of inspections.
- (2) The providing of forms required.
- (3) Other matters necessary for the enforcement of this chapter.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.12.*

#### **IC 16-44-2-14**

##### **Railroad and transportation companies; records; inspections**

Sec. 14. (a) Every agent and employee of any railroad company or other transportation company that has the custody of books or records showing the shipment or receipt of petroleum products shall give and permit the state department or the state department's agents and employees free access to those books and records for the purpose of determining the amount of those products shipped and received.

(b) All clerks, bookkeepers, express agents, railroad agents or officials, employees of common carriers or contract carriers, or other persons shall assist the state department or the state department's employees or authorized agents, when so requested, in tracing, finding, and inspecting shipments.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.13.*

#### **IC 16-44-2-15**

##### **Receipt of kerosene or gasoline; definition**

Sec. 15. For the purposes of this chapter, gasoline or kerosene is considered to be received in Indiana as follows:

- (1) If stored in tanks adjacent to a refinery or a marine or pipeline terminal in Indiana, the gasoline or kerosene is considered to be received when withdrawn from storage for sale or use in Indiana or for transportation to destinations in Indiana other than for transfer to other refineries or marine or pipeline terminals in Indiana and not before. When so withdrawn, the gasoline or kerosene is considered to be received by the person who is the owner of the gasoline or kerosene at the time of

withdrawal unless the gasoline or kerosene is withdrawn for transportation or delivery to or for the account of a person who is bonded under the gasoline tax law (IC 6-6-1.1), in which case the gasoline or kerosene is considered to be received by the person to or for whose account the gasoline or kerosene is transported or delivered.

(2) If imported into Indiana (other than to a refinery or marine or pipeline terminal in Indiana), the gasoline or kerosene is considered to be received at the time and by the person who is the owner of the gasoline or kerosene when the gasoline or kerosene is spotted or placed for unloading in Indiana.

(3) If produced, blended, or compounded in Indiana other than at a refinery or a marine or pipeline terminal, the gasoline or kerosene is considered to be received when produced, blended, or compounded.

*As added by P.L.2-1993, SEC.27.*

#### **IC 16-44-2-16**

##### **Records of tests and inspections**

Sec. 16. The state department shall keep the records necessary for the purposes of this chapter of all tests and inspections under this chapter.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.14.*

#### **IC 16-44-2-17**

##### **Certificate of inspection**

Sec. 17. (a) The state department shall furnish to the person for whom inspections are made under this chapter a certificate of inspection covering each receipt by that person of gasoline or kerosene with respect to which an inspection is made. The certificate must indicate the following:

- (1) The date of the inspection.
- (2) The identity of the container from which the sample was taken.
- (3) The kind and quantity of the product received.
- (4) The identity of the conveyance by which the product was received.
- (5) The result of the test and inspection.

(b) To enable the state department to make certificates covering withdrawals from storage at a refinery or marine or pipeline terminal and the receipt of gasoline or kerosene at other points in Indiana, the records of withdrawals and receipts shall be available to the state department during all reasonable business hours.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.15.*

#### **IC 16-44-2-18**

##### **Inspection fees; surety bonds; failure to pay tax; penalty and interest**

Sec. 18. (a) Except as provided in subsection (b), fees for the inspection of gasoline or kerosene shall be at the rate of forty cents (\$0.40) per barrel (fifty (50) gallons) on all gasoline or kerosene received in Indiana less deductions provided in this section.

(b) A fee for inspection of gasoline or kerosene may not be charged for the following:

(1) On transport or tank car shipments direct to the federal government.

(2) On gasoline or kerosene received and subsequently exported from Indiana or returned to refineries or marine or pipeline terminals in Indiana.

(c) Fees shall be paid to the state department by the person receiving gasoline or kerosene in Indiana at the time gasoline or kerosene products are received, unless the person receiving the gasoline or kerosene is licensed as a distributor under the gasoline tax law (IC 6-6-1.1). In that case, the person in receipt of the gasoline or kerosene shall do the following:

(1) Include in the person's monthly gasoline tax report a statement of all gasoline and kerosene received during the preceding calendar month on which inspection fees are due.

(2) Remit the amount of the inspection fees at the same time the monthly motor fuel tax report is due.

(d) A refiner or other person supplying gasoline or kerosene to the first receiver in Indiana may elect to pay the fees monthly on all gasoline or kerosene supplied to persons in Indiana not licensed as distributors under the gasoline tax law (IC 6-6-1.1). If the supplier is not licensed as a distributor under the gasoline tax law of Indiana (IC 6-6-1.1), the supplier shall, as a condition precedent to such election, file with the state department a corporate surety bond that meets the following conditions:

(1) Is in the form and amount that the state department determines, not to exceed two thousand dollars (\$2,000).

(2) Is conditioned that the supplier does the following:

(A) Reports all gasoline and kerosene supplied by the supplier to persons in Indiana not licensed as distributors under the gasoline tax law (IC 6-6-1.1).

(B) Pays inspection fees monthly on or before the twenty-fifth day of each calendar month for the preceding calendar month.

(e) A person taking credit for gasoline or kerosene exported or returned to a refinery or terminal shall substantiate that credit in the manner that the state department reasonably requires by rule.

(f) A distributor who fails to file a monthly report and pay the tax due as required by this chapter is subject to a penalty of five percent (5%) of the amount of unpaid tax due and interest on the unpaid tax and penalty at the rate of eight percent (8%) annually. However, if a delay not exceeding ten (10) days is due to a mistake, an accident, or an oversight without intent to avoid payment, the administrator may waive the penalty and interest.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993,*

*SEC.16; P.L.28-1997, SEC.29.*

#### **IC 16-44-2-19**

##### **Disposition of funds collected**

Sec. 19. All money collected for inspections under this chapter shall be deposited in the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

*As added by P.L.2-1993, SEC.27. Amended by P.L.1-1996, SEC.78; P.L.2-1998, SEC.61.*

#### **IC 16-44-2-20**

##### **Inspectors; conflict of interest**

Sec. 20. A person employed by the state department to make inspections under this chapter may not do any of the following:

- (1) Directly or indirectly engage in the business of dealing in petroleum products.
- (2) Engage in any other business of a nature that prevents proper attention to the details and duties of the necessary inspections as prescribed by this chapter.

*As added by P.L.2-1993, SEC.27. Amended by P.L.177-1993, SEC.17.*

#### **IC 16-44-2-21**

##### **False or altered mark or brand**

Sec. 21. A person may not knowingly mark or brand falsely a container of petroleum products or change, alter, or deface the mark or brand of such a container.

*As added by P.L.2-1993, SEC.27.*

#### **IC 16-44-2-22**

##### **Violations**

Sec. 22. Except as provided in sections 9 and 10 of this chapter, a person who recklessly violates this chapter commits a Class B misdemeanor.

*As added by P.L.2-1993, SEC.27.*